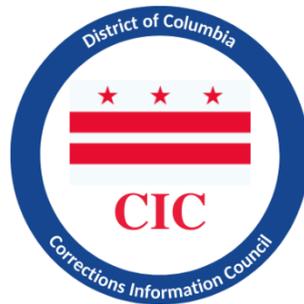


**District of Columbia
Corrections Information Council**



**Correctional Policies on Transgender, Gender Non-
Conforming, and Intersex DC Residents**

March 17, 2023

Table of Contents

Definitions	3
Bureau of Prisons (BOP) Policies	4
What BOP policies or protections are in place?	4
<i>Medical Care</i>	5
DC Department of Corrections (DOC) Policies	6
What DOC policies or protections are in place?	6
Conclusion	8

Definitions¹

- *Cisgender* - the state of one's gender identity matching one's biological sex.
- *Gender* - a construct used to classify a person as male, female, both, or neither. Gender encompasses aspects of social identity, psychological identity, and human behavior.
- *Gender identity* – a person's sense of their own gender, which is communicated to others by their gender expression.
- *Gender expression* – includes mannerisms, clothing, hair style, and choice of activities.
- *Gender Affirming* - Healthcare, surgery, treatment, etc. helping or enabling a person, especially a transgender person, to live according to their gender identity.
- *Gender Dysphoria (GD)* – a mental health diagnosis currently defined by the DSM-5 as, “A strong and persistent cross-gender identification. It is manifested by a stated desire to be the opposite sex and persistent discomfort with his or her biologically assigned sex.” Not all transgender inmates will have a diagnosis of GD.
- *Gender Neutral* – Terms that do not specify a specific gender.
- *Gender Non-Conforming* - any person whose expression of gender (e.g. masculinity and femininity) does not conform to the dominant gender norms of Western culture.
- *Intersex* - Intersex is defined as a set of medical conditions that features a congenital irregularity of the reproductive and sexual system. A person with an intersex condition is born with sex chromosomes, external genitalia, and/or an internal reproductive system that is not considered “standard” for either male or female.
- *Nonbinary* - an adjective used by people who experience their gender identity and/or gender expression as falling outside the binary gender categories of "man" and "woman."
- *Transgender* – the state of one's gender identity not matching one's biological sex.²
- *Transition* – the process a person undertakes to bring their gender expression and/or their body into alignment with their gender identity.

¹ GLAAD Media Reference Guide. 11th ed. <https://www.glaad.org/reference/trans-terms>

² The Bureau has additionally defined “transgender” as “...one who has met with a Bureau of Prisons psychologist and signed the form indicating consent to be identified within the agency as transgender.” PS5200.08

Bureau of Prisons (BOP) Policies

What BOP policies or protections are in place?

Transgender issues are handled by the Bureau Central Offices. The primary contact for transgender issues is the Women and Special Populations Branch (WASPB). This branch is responsible for gathering and distributing information, ensuring program provision, and developing training for BOP employees and institutions. The Health Services Division at Central Office is responsible for all medical and psychiatric treatment for transgender residents, while the Psychology Services Branch oversees mental health programming and provides advice on identification and evaluation of transgender residents.

An important component of BOP transgender services is the Transgender Executive Council (TEC). The TEC serves as the “official decision-making body on all issues affecting the transgender population.”³ The council consists of representatives from the abovementioned agencies in addition to the Designation and Sentence Computation Center (DSCC) and Reentry Services. The TEC provides guidance on designation, housing, and makes recommendations based on “an inmate’s security level, criminal and disciplinary history, current gender expression, medical and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse.”⁴ Wardens at facilities must submit documentation to the TEC if residents make any requests regarding accommodations or transfers due to their gender identity.

LGBTQ+ residents fall under BOP standard protections regarding sexual harassment, assault, and treatment. Transgender residents, due to their unique circumstances, have a special manual to declare additional protections. The first Transgender Offender Manual (PS5200.04) was issued January 18, 2017, to “ensure the Bureau of Prisons (Bureau) properly identifies, tracks, and provides services to the transgender population.” This manual outlines the Bureau’s programs and policies that incorporate transgender issues in facility operations.

The most recent manual (PS5200.08) was issued January 13, 2022. This manual features changes that include a clarification of staff duties; requirements for record management and assignments; detailed policies for resident transfers, consultations, and programming; updated initial classification protocols; and added information concerning medical practices. Additionally, the manual states that all residents, whether officially registered as transgender or not by the Bureau will have access to treatment, especially psychological services.⁵ Psychology staff at the facility provide a range of treatment options to help residents who struggle with gender dysphoria as well as any non-related mental health issues. As a guideline for all staff, the Prison Rape Elimination Act (PREA) modified the BOP program statement on the Sexually Abusive Behavior Prevention and Intervention

³ Transgender Offender Manual PS5200.08, Section 3(a) (p.4); bop.gov/policy/progstat/5200-08-cn-1.pdf

⁴ Transgender Offender Manual PS5200.08, Section 5 (p.6); bop.gov/policy/progstat/5200-08-cn-1.pdf

⁵ Transgender Offender Manual PS5200.08, Section 7(c) (p.8); bop.gov/policy/progstat/5200-08-cn-1.pdf

Program. The revision states that staff must have training on searches and communication skills when addressing transgender residents.⁶ Staff also attends a refresher training annually.

The manual outlines the extensive steps that residents must take to be officially identified by the BOP according to their gender identity. There are various ways the Bureau can be notified that a resident is transgender.⁷ After the Bureau is notified, staff will defer to the TEC for a case review. According to the manual, reviews are considered on a case-by-case basis, but the resident's preferred gender identity should be heavily considered. Residents must then be assigned a specific Case Management Activity (CMA) screening code, which will allow them to be reviewed by a psychologist.⁸ Once the resident affirms their transgender identity, their screening code will be updated, and facility staff will be notified. The new screening code allows them to request access to gender affirming care, searches according to their gender identity, programming, undergarments to aid in a resident's gender expression, etc. It is mandatory that residents with a CMA assignment are identified by either gender-neutral terms, including their last name, or the resident's preferred pronouns. When transgender residents are nearing their release date, unit management must formulate a pre-release plan to assist them in obtaining proper identification, housing, employment, and other resources.

Medical Care

If a resident requests hormone therapy or other medical treatment, they must undergo an assessment by the facility's medical staff. The Medical and Psychology departments will discuss the benefits of these procedures. If permitted by Medical and Psychology staff, the resident is provided hormone treatment.

CMA residents who wish to undergo gender affirming surgery are usually considered after one year of good conduct and compliance with all medical, psychological, and programming services at the institution. The resident must then submit a request to the Warden, who will forward the request to the TEC. The TEC will then determine if the resident has met "all milestones and individual goals for surgical consideration."⁹ Finally, the Medical Director determines if the surgery is medically appropriate.

⁶ BOP Program Statement Sexually Abusive Behavior Prevention and Intervention Program, Section 28 C.F.R. § 115.15(f), 115.31 (a) (9), and 115.42 (c); bop.gov/policy/progstat/5324_012.pdf

⁷ Identification can include a Pre-Sentence Report, court order, U.S. Attorney's Office, defense counsel, the resident, etc.

⁸ Holdover facilities are exempt from this screening process.

⁹ Transgender Offender Manual PS5200.08, Section 9 (p.9); bop.gov/policy/progstat/5200-08-cn-1.pdf

DC Department of Corrections (DOC) Policies

What DOC policies or protections are in place?

The current DOC program statement on Gender Classification and Housing (4020.3I) became effective on April 20, 2022, and a review is scheduled for April 20, 2023. This statement provides transgender residents in DOC custody respectful services and safe housing.¹⁰ Since the DOC houses residents in male or female units, transgender, gender non-conforming, and intersex residents are housed based on their preference.¹¹ It is required that any preference is stated during the initial intake. Residents can be housed in single cells¹² or with another transgender, Intersex, or Gender Nonconforming resident. Residents that are placed in protective custody due to safety and security concerns regarding their gender identity are allowed to access the same services and programs as cisgender residents who are not in protective custody. After approval by medical staff, residents who were receiving hormone therapy prior to their arrival at the DOC are allowed to continue their treatment. Additionally, this policy grants residents appropriate underclothing and the opportunity to shower separately. The policy also states that staff are permitted to inquire about a resident's identity or gender expression only for the purpose of intake, housing, medical care, programming, etc. The resident's information must remain confidential. Staff must refer to all residents by their last name to guarantee gender-neutrality or, if permitted by the resident, to utilize the resident's preferred pronouns.

Program statement 4020.3I supersedes the DC DOC's 2021 program statement, 4020.3H. Significant changes in the statement 4020.3I include:

1. The deletion of section 9(f) which stated that "Transgender, Intersex, or Gender Nonconforming inmate shall be treated as a protective custody inmate for the duration of the intake process."¹³
2. A revision of section 10(a) in the 2021 statement 4020.3H, which stated that "Case management staff shall review commitment documents for gender assignment or any notification that identifies the inmate as Transgender, Intersex, Gender Nonconforming, or 'vulnerable.'" Section 10(a) now states that residents who identify as Transgender, Intersex, or Gender Nonconforming will be housed in protective custody upon entering the DOC (voluntary or involuntary). They will also be placed in the intake housing unit in accordance with their gender housing preference. Within a 24-hour period, the resident will undergo an assessment conducted by the PREA Victim Services Coordinator. Within 72 hours, the

¹⁰ See DC DOC program statement 4020.3I (p.2); doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204020.3I%20Gender%20Classification%20and%20Housing%2004-20-2022.pdf

¹¹ This is guaranteed if the Transgender Housing Committee has recommended and approved.

¹² Single-cell: Housed in a cell with no cellmate.

¹³ See DC DOC Program Statement 4020.3H (p.6);

doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204020.3H%20Gender%20Classification%20and%20Housing%2006-17-2021_0.pdf

Transgender Housing Committee will conduct a formal classification and housing needs assessment.

3. The addition of section 10(c) establishing a case manager on-call during weekends, after hours, and on holidays to speak with transgender, intersex, or gender nonconforming residents during intake to guarantee they are housed according to their preference.¹⁴

4020.3I details the duties of the Transgender Housing Committee who determines the resident's housing assignment after reviewing all records, analyzing assessments made by PREA and Risk Assessment, and conducting an interview with the resident. This committee consists of the DOC Chief of Case Management or a designee from the Programs and Case Management (PCM) division, a medical practitioner from the DOC Office of Health Services Administration (OSHA), a mental health clinician from OSHA, a DOC Correctional Supervisor from the Operations division, the PREA Victim's Services Coordinator, a representative from the Mayor's Office on LGBTQ Affairs, and DOC approved volunteers who are either members of the transgender community and knowledgeable about transgender issues, or acknowledged experts in transgender affairs. After the Transgender Housing Committee determines the resident's housing assignment, they give the decision to the Warden for approval. If the Warden disagrees, they must submit a written statement to the Director of the Transgender Housing Committee. Residents may also appeal the housing assignment. Lastly, the Transgender Advisory Committee (TAC) acts as a liaison between DOC and the transgender community to keep the DOC up to date on barriers that the transgender community faces and resources that are available.

For residents entering halfway houses, the Transgender Housing Committee will issue a housing assignment that is determined by procedures similar to those used during the DOC intake process. Recommendations are forwarded to the Office of Community Corrections Program Administrator for approval. Residents are permitted to wear clothing in accordance with their gender identity. At the halfway house, staff must refer to residents with their preferred pronouns, gender neutral terms, or by their last name.

¹⁴ See DC DOC Program Statement 4020.3I (p.7-8); doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204020.3I%20Gender%20Classification%20and%20Housing%2004-20-2022.pdf

Conclusion

The transgender, gender non-conforming, and intersex community is a special population that faces unique issues. Notably, many of the amendments to these statements and policies are due to the residents, their families, and the extensive research that has illustrated best and worst practices affecting this population. Even with current policies, there are still extensive steps that residents in the BOP and DOC must take to request gender-affirming care and recognition according to their gender-identity. However, there are multi-layered challenges because BOP and DOC policy adjustments require balancing equity and accessibility with safety and security.

It is difficult to collect data from residents who do not always feel comfortable disclosing their sexual orientation or gender identity to the CIC, facility staff, or other residents. However, CIC data indicates that the most common concerns of this population mirror those of the general population, which include questions about Compassionate Release, IRRA, or parole. As additional messages from DC LGBTQ+ residents are received, the agency can identify recurring issues and provide recommendations on policies and best practices.